

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1433 of 2002****For Approval and Signature:****HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

=====

**MINOR PRAKASHBHAI @ KISHANJI GEMAJI MARWADI -
Appellant(s)**

Versus

SALIM BABUBHAI RATHOD & 2 - Defendant(s)

=====

Appearance :

MR RN SHAH for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1 - 2.
MR MAULIK J SHELAT for Defendant(s) : 3,

=====

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**Date : 03/11/2006****ORAL JUDGMENT**

This is an appeal by the original claimant. He has sought

enhancement of the compensation amount awarded by the Motor Accident Claims Tribunal [Aux.] Panchmahals at Godhra by its judgment dated 3rd October, 2001 in M.A.C. Petition No. 295 of 1997. The claim petition has been filed by the father of the injured boy in his capacity as guardian of the victim. It appears that on 17th January, 1997 when minor Prakash alias Kishanji Gimaji Marvadi, aged about 6 years was walking on the road situated near his house, respondent no. 1 drove his vehicle bearing Registration No. GJ-7-X-6407 with excessive speed and in negligent manner knocking down Prakash on the road. As a result of this, he sustained serious injuries. He was hospitalized for treatment and it was found that he had received injuries on the head as well as fracture of tibia L/3 of the right leg. Subsequently the claim petition was filed for claiming compensation initially of Rs.1,10,000/-, but later on reduced to Rs.80,000/=.

2. The Tribunal, on the basis of the material produced before it, arrived at a conclusion that the injury was caused due to rash and negligent driving of respondent no. 1. It also came to the conclusion that the vehicle at the relevant time was owned by respondent no. 2 and insured with respondent no. 3. It also assessed the compensation under different heads and ultimately awarded a total sum of Rs.19,500/= together with interest at the rate of 6% p a from the date of the petition till realization and proportionate costs. The appellant being dissatisfied with the amount of compensation, has now

preferred this appeal for enhancement.

3. I have perused the record of this appeal. I have also heard Mr. Shelat, learned advocate for respondent no. 3 – Insurance Company. Respondents no. 1 and 2 though served, no-one appeared on their behalf. The say of the appellant is that under the head of pain, shock and suffering very less amount has been paid. It has further erred in holding that the loss of earning capacity of the appellant was to the extent of Rs.15,000/= only per year. According to the appellant, the Tribunal ought to have given higher multiplier than 15.

3.1. So far the findings on the aspect of negligence of respondent no. 1 and the vehicle being insured with respondent no. 3 are not in dispute since no respondent has challenged them. In view of the same, these findings have now become final. The only question that is required to be decided in this appeal is with regard to quantum. As stated earlier, the Tribunal has awarded Rs.19,500/= under different heads. In para. 11 of the judgment the Tribunal has held that the boy was aged 6 years at the time of accident. It has, however, observed that whether the boy was kept as indoor patient in the SSG Hospital is not very certain since the appellant had not produced any medical record of the appellant. The Tribunal has, of-course awarded Rs.1,000/= for medical treatment and Rs.1,000/= towards

reimbursement of the expenses made by him while staying at some-one's place. For transportation and for special diet amount of Rs.500/= each has been granted. So far pain, shock and suffering is concerned, it has awarded sum of Rs.7,500/=. The Tribunal has awarded Rs.9,000/= towards future loss of income. The total comes to Rs.19,500/=.

4. The record further shows that apart from the fracture, the appellant had sustained injuries on the head as well as abrasions on the legs. He was taken to SSG Hospital for treatment. Whether he was admitted as an indoor patient or not is not very sure. But the fact remains that because of the injury to the leg, he had sustained partial disability to the extent of 10% in respect of the injured leg and in respect of entire body 4%. It may be noted here that the victim was a child of 6 years. He was knocked down by comparatively heavy vehicle, namely Tempo. It also appears that the impact and the resultant injuries were quite serious. It is, therefore, very natural that the child would have got scared and would have suffered considerable shock. It may also be noted here that because of the impact, the boy was thrown on the ground and the injuries were caused to head as well as to the right leg. The X-ray of the injured leg shows that he had sustained fracture of tibia L/3. Thus, it clearly appears that the injuries caused to him were rather serious. The seriousness and pain and suffering would certainly increase because the victim is small boy aged about 6 years. The compensation awarded by the Tribunal

under the head of pain and suffering is, therefore, required to be increased. Not only that but the injuries received on the other parts of the body appear to be ignored by the Tribunal. Hence, under the head of pain and suffering the victim will be entitled to receive a sum of Rs.15,000/=

4.1. So far other heads are concerned, the learned advocate appearing for the appellant-claimant has passed a joint pursis on the basis of the medical certificate of Dr. Tushar P Modi dated 10/12/1997. He has assessed the disability at 10%. However, it has been reduced to 4% in respect of the entire body vide the said pursis. The Tribunal has assessed the loss of earning capacity on the basis of Rs.15,000/= per annum in accordance with the 2nd Schedule of the Motor Vehicles Act since the child of 6 years could not earn any income. This is a notional income kept in view by the Tribunal. It appears that on that count the appreciation of the Tribunal is proper and it is not required to be disturbed.

5. In view of the aforesaid, this appeal is partly allowed i.e., to the extent of granting additional compensation of Rs.7,500/= under the head of pain and suffering. Now the Insurance Company is directed to deposit the additional amount together with proportionate costs and interest at the rate of 6% p a from the date of petition till deposit, within three months from the date of this judgment before the Tribunal. The Tribunal is directed to invest this

amount by way of fixed deposit for a period of three years in a nationalized bank.

Registry is directed to retransmit the R & P to the concerned Tribunal forthwith.

[Akshay H Mehta, J.]

* Pansala.